

STATE OF IOWA  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Fact Finding	*	
Between	*	
	*	FINDINGS
THE POLICE LABOR RELATIONS	*	AND
ORGANIZATION OF IOWA CITY	*	RECOMMENDATIONS
	*	
	*	
	*	
and	*	Anna DuVal Smith
	*	Fact Finder
CITY OF IOWA CITY	*	
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Appearances

For the Police Labor Relations Organization of Iowa City:

Terrance McGann  
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111 East Wacker Dr., Ste. 2600  
Chicago, IL 60601-4208

For Iowa City:

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## I. SUBMISSION

This matter came for hearing at 12:00 noon on February 20, 2009, at City Hall in Iowa City, Iowa before Anna DuVal Smith who was appointed Fact Finder pursuant to Section 20.21 of the Iowa Public Employment Relations Act. Present for the Police Labor Relations Organization of Iowa City ("PLRO") in addition to Counsel was David Schwindt. Present for Iowa City ("City") were Personnel Administrator Karen Jennings, First Assistant City Attorney Sarah Holecek, and Asst. City Manager Dale Helling. Both parties were afforded a complete opportunity to examine witnesses and to present evidence. Items submitted by the parties were:

- (1) Article IX Section 8, Court Time
- (2) Article XVI Personnel Transactions - Rules, Sections 1 (Documents) and
- (3) Section 3 (Minor Infractions)
- (4) Article XVIII Insurance, Section 1 (Medical)
- (5) Article XXII Uniforms, Section 2 (Plain Clothes Officers)
- (6) Article XXVIII Compensation, Section 2 (Pay) and
- (7) (Step Increases)
- (8) Article XVIII Compensation, Section 5 Special Duty Pay (Field Training Officers).

In addition, the parties entered fact finding with City proposals to amend Article XXVI Section 2 Grievance Procedure Paragraphs b and e. During the course of the hearing they settled their differences in accord with the City's proposal with respect to arbitrator qualifications and authority. That agreement is incorporated herein as if written at length and recommended by the Fact Finder. Further, PLRO stated in its post-hearing brief that it agreed to the City's proposal for Step 2 with regard to information to be contained on the written grievance. This agreement, too, is incorporated herein as if written at length and recommended by the Fact Finder. The oral hearing concluded at 1:47 p.m. Post-hearing briefs were filed on February 24 whereupon the record was closed. In rendering these findings and recommendations, the Fact Finder has given full consideration to all reliable information relevant to the impasse items and to the criteria specified for arbitrator consideration in Section 20.22 (9) of the Iowa Code, to wit:

- (a) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

- (b) Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- (c) The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- (d) The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

## II. BACKGROUND

Located on the Iowa River in eastern Iowa, Iowa City is home to the University of Iowa. The 2000 census ranked it as Iowa's sixth in population with 62,220 residents. The general fund budget and sources of City revenue were not submitted as evidence, the parties relying on the midwest urban consumer price index (CPI-U), data from other cities which this Fact Finder determined in 2005 to be comparable to Iowa City<sup>1</sup>, and settlements with other Iowa City bargaining units (AFSCME Local 183 and the Iowa City Association of Professional Firefighters).

## III. ISSUES AND POSITIONS OF THE PARTIES

### Wages

Pointing out that the City has already agreed to wage increases for FY 2010 of 3.10% in the AFSCME unit and 3.05% for fire, PLRO seeks 4.45% for the police. Using the same set of police bargaining units taken by this Fact Finder in 2005 to be comparable to Iowa City, it notes that the City is dead last in starting officer pay and sixth of the nine at 10, 15 and 20 years of service. Its FY 2009 increase of 3.3% was among the lowest of the group (range = 3.25 - 4.0%). PLRO emphasizes in particular the continuing disparity between top officer and top sergeant (44.6%), growing every year since the mid 1990s. Its proposal for 4.45% will begin the process of bridging this gap. The City's offer of 2% cannot be justified even by the City's own submissions, which reflect an average 3.6% increase (range 3%-4.75%) for FY 2010, as it would widen the gap between officers and sergeants. The Fact Finder should also dismiss the City's

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<sup>1</sup>Ames, Cedar Rapids, Council Bluffs, Davenport, Des Moines, Dubuque, Sioux City and Waterloo.

internal parity argument (as she did in 2005) because the three Iowa City bargaining units have uniquely different interests and have historically bargained separately. Except for health care, the FY 2010 settlements for these other units reflect very different terms and conditions of employment and different percentage increases. Finally, the City is not claiming it is unable to fund PLRO's request.

The City urges the Fact Finder to award 2% as being more justified than the 4.5% sought by PLRO. No inflationary catch-up is warranted because of the real wage increases granted in the last fifteen years. As for PLRO's main argument of the differential between the rank-and-file and command staff, the PLRO must show there is a similarity of duties between command and other ranks. Since these roles are presumptively different, the one being managerial and supervisory and the other providing direct service, there is no justification for a 4.5% wage increase without a breakthrough on health care.

#### Health Insurance

The City seeks several changes in health insurance:

- a. Change from 90/10 to 80/20 percent plan;
- b. Increase maximum out-of-pocket from \$500 to \$1500;
- c. Implement a cost containment/reward system for employees who select generic equivalents over name-brand prescription drugs when available;
- d. Increase prescription drug deductible from \$100 per individual/family to \$300, and/or change the deductible to apply to each member of the family;
- e. Increase co-payment of insurance premiums to 10 percent.

The City submits data to show that the PLRO's health insurance is liberal compared with police in comparable Iowa cities in the following ways: Lowest out-of-pocket maximum, lowest deductible, \$0 employee contribution toward insurance for single coverage and \$55 lower than Ames, Cedar Falls, Council Bluffs, Dubuque and West Des Moines. In support of its demand the City submits that employee contributions would provide an incentive to use this insurance responsibly.

The PLRO wants the status quo. It states this topic was never the subject of serious negotiations. The Fact Finder previously held that health insurance is an area "where internal

parity is rightly accorded great weight.” Neither of the other bargaining units yielded to demands like these. They only agreed to an additional \$5/month contribution towards family coverage. Moreover, the external comparison units fail to support the City’s request because most of them have 90/10 percent plans and out-of-pockets ranging from \$300 to \$1000 (single) and \$700 to \$2000 (family).

#### Clothing and Equipment Allowance for Plain Clothes Officers

The PLRO proposes a long-awaited increase in the clothing allowance for plain clothes officers (now at \$600) to \$900 and an increase in the cleaning allowance from \$150 to \$300. It also wants to expand the list of equipment covered and to eliminate the requirement to produce receipts. It points out that \$600 has been in effect for 27 years despite the rise in cost of living (CPI-U Midwest equivalent of \$600 in 2008 - \$1,369.70). The cleaning/boot allowance (now at \$150) request is for \$300 and an expanded list of equipment directly related to their employment. Moreover, it wants to eliminate the requirement to produce receipts because of a change in the tax code which makes clothing allowances taxable income. This, PLRO points out, will eliminate administrative costs to the City and time for the officers.

The City urges the neutral to reject this proposal. For one, the CPI-U Midwest should not be applied because the cost of clothing is only one component of the market basket. Apparel, itself, has grown only 14 percent since 1977. Additionally, the provisions in comparable cities do not support PLRO’s case as there is wide disparity in the dollar amount and lack of information on what is covered.

#### Court Pay

The PLRO wants to add language to Article IX Section 8 defining when an officer’s obligation ceases when under subpoena or when acting at the direction of a government agency, to wit:

The officer’s obligation to the City shall be considered complete when he/she is released by the authority issuing the subpoena or direction. If the officer’s appearance is required outside the City of Iowa City his/her obligation to the City shall be considered complete when he/she has returned to the City of Iowa City

and is no longer operating a vehicle provided by the City of Iowa City. (City Ex. 4)

The PLRO claims this is a cost-neutral proposal and urges its recommendation by the Fact-Finder.

The City rejects this proposal which it says would allow for multiple payments of the two-hour minimum on one day. It finds support for its case in the contracts of comparable police units of which only one, Cedar Rapids, has a similar provision.

#### Special Duty Pay

The PLRO proposes an increase in Field Training Officer (“FTO”) pay which currently is \$5 per watch. This is a voluntary position requiring several hours of training. The PLRO points out that an FTO has added responsibility in that he must protect trainees in often dangerous and volatile conditions. As such, PLRO says, it demands a reasonable increase to one hour of pay per watch at the overtime rate.

The City resists this demand on the basis of what FTO pay is in other comparable cities. Some have no such provision (Ames, Cedar Falls, Cedar Rapids, and Waterloo). The other five (Council Bluffs, Davenport, Des Moines, Dubuque and Sioux City) have hourly wage equivalents ranging from \$0.81 to \$3.39, all far below what the City submits would cost \$40/watch.<sup>2</sup>

#### Personnel Transactions

The City wants to strike language limiting the use of documents not contained in officers’ personnel files (Article XVI, Section 1) and to place a condition on removal of minor infractions from officers’ files after a year, i.e., that the behavior or problem “has been corrected as determined by the supervisor” (Article XVI, Section 3). It points out that although there is no discernable pattern, most have no restrictive language in their collective bargaining agreements.

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<sup>2</sup>Current cost of one hour of overtime as calculated by the City.

Finally, the City believes this may be a permissive subject of bargaining and it reserves its right to strike the offending language.

The PLRO first points out that the City is trying in both sections to deviate from the historical practices of document retention. Prohibiting consideration of documents not in the file is a matter of fairness in that the contents of these files puts the affected officer on notice and provides accountability by the City. The additional language for Section 3 is not only a deviation from historical practice, but expands the scope of discretion with little or no accountability.

#### Step Increases

Current language provides for step increases in pay upon various anniversaries of appointment. The City would add the condition that the officer achieve a satisfactory performance appraisal. Further, it wants to include step increases in the total costing of any collective bargaining agreement going forward. It argues that workers benefit from performance-based increases in that failure to receive one is an incentive to correct weak performance and thus avoid termination. The advantage to the City is improved service to the community. The City offers the collective bargaining agreements of Ames, Cedar Falls, Des Moines and Dubuque as comparable cities with such provisions.

The PLRO objects to this proposal as providing unfettered authority to the Chief. Pay steps are time-in-service, not pay-for-performance. The City is not without a tool for improving job performance as it can take corrective action.

### IV. FINDINGS AND RECOMMENDATIONS

#### Wages

PLRO's main argument is one of a perceived imbalance between what the top officers and the top sergeants earn. The reason the differential is growing is that the officers' percentage raises (rather than dollar amounts) are being applied to sergeants. Thus, larger percentage increases for the officers in an attempt to narrow the gap only make the problem worse. This structural issue will remain unless the command officers' compensation is detached from the

rank-and-file's by applying flat dollar wage increases which have the effect of compressing the wage structure. In 2005 this Fact Finder's recommendation for longevity was an attempt to address in part the issue of widening disparity. But if sergeants have longevity, too, it is an incomplete solution because sergeants tend to have more seniority than officers. In any event, this Fact Finder cannot recommend the percentage increase requested by PLRO because it will be counterproductive. Not only is it a percentage increase, but it is a large one for this economic environment. Inflation is not a significant factor in the current economic environment, nor is the City arguing an inability to pay. In fact, it has already settled with two other unions at just over 3 percent. The only cities in the external comparison group which have negotiated for fiscal year 2010 in the present economic environment, Waterloo and Des Moines, settled at 3% and 3.25%. The other cities negotiated their fiscal year 2010 wages in better times, and their increases reflect that environment. The Fact Finder thus recommends 3.1% for the Iowa City police. The firefighter unit settled for a little less, but they also got additional longevity and holiday pay while agreeing to a small monthly increase in the cost of insurance. The AFSCME unit settled for 3.1%, but no other information about that contract was provided. 3.1% for the police is close to its historical average and does not distort its relationship with other City bargaining units or to other Iowa cities of similar size.

#### Health Insurance

No change in the health insurance benefit is recommended. The PLRO's observation of what other cities in the comparison group do is correct. More importantly, the City's firefighters received increases in the unit-wide benefits of longevity and holiday pay in their settlement which included the \$5/month firefighter contribution to health insurance cost.

#### Clothing and Equipment Allowance for Plain Clothes Officers

The Fact Finder agrees that after 27 years it is time for an improvement here. However, as the City points out, PLRO's request misapplies the CPI-U. The Fact Finder recommends \$700 for clothing and \$175 for cleaning and boots as better compensating for inflation than the



PLRO's proposal. In addition, the comparables submitted by the City support cash payment of the allowance rather than reimbursement upon presentation of a receipt (Des Moines being the only other city not making a cash payment). They do not, however, support an expanded list of gear as only one city has such a benefit.

#### Court Pay

This proposal must be rejected. First, it is not cost-neutral as claimed by the PLRO because it would require a second minimum if called back. Second, of the eight other cities in the comparison group, only Cedar Rapids has what the PLRO seeks here.

#### Special Duty Pay

While it is true that three cities in the eight-city set the Fact Finder has held to be comparable to Iowa City have no provision for FTO pay, the majority do. Every one of these has an hourly wage equivalent greater than Iowa City's. Improvement is justified, but the PLRO cannot expect to match or better the leaders (Des Moines and Dubuque) in one contract. The Fact Finder therefore recommends the Sioux City formula (10 percent of hourly pay for each hour of FTO duty) as a significant step forward.

#### Personnel Transactions

The Fact Finder cannot support the City's proposal to permit use of documents other than those in an officer's file and to give supervisors the authority to retain stale minor discipline essentially at their discretion. Documents serve to put an officer on notice and thus support correction. If an unacceptable behavior or problem has not been corrected by old discipline, fresh discipline or counseling is available. Moreover, the City has not identified a problem warranting such changes.

#### Step Increases

The Fact Finder is also unable to support the City's desire to change step increases for time-in-service to pay-for-performance. This would represent a radical departure from the existing system and the City has not demonstrated a need for it as, for example, showing failure

of the existing performance appraisal system to sustain acceptable officer performance.

Moreover, only three of the eight comparison cities have such systems.

#### V. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Wages	3.1%
Health Insurance	Current provision
Clothing and Equipment Allowance (Plain Clothes Officers)	\$700 clothing/\$175 cleaning & boots; cash payment
Court Pay	Current provision
Special Duty Pay (FTO)	10% of hourly pay for each hour of FTO duty
Personnel Transactions	Current provision
Step Increases	Current provision
Grievance Procedure - Step Two	As agreed by the parties
Grievance Procedure - Arbitration	As agreed by the parties

Respectfully submitted,



Anna DuVal Smith, Ph.D.  
Fact Finder

March 2, 2009  
Cuyahoga County, Ohio

### CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2009, I served the foregoing Report of Fact Finder upon each of the parties to this matter by express mailing a copy to them at their respective addresses as shown below:

Terrance McGann  
Whitfield, McGann & Ketterman  
111 East Wacker Dr., Ste. 2600  
Chicago, IL 60601-4208

Steven B. Rynecki  
von Briesen & Roper, S.C.  
411 East Wisconsin Ave., Ste. 700  
Milwaukee, WI 53202

I further certify that on the 2nd day of March, 2009, I submitted this Report for filing by express mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.

A handwritten signature in black ink, appearing to read "Anna DuVal Smith".

Anna DuVal Smith, Ph.D.  
Fact Finder